IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 1366 of 2000

in

SPECIAL CIVIL APPLICATIONNo 288 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

D N BHATT

Versus

P K MISHRA

Appearance:

MR PARESH UPADHYAY for Petitioner
M/S PATEL ADVOCATES for Respondent No. 1
S.K. PATEL A.G. P. for Respondent No. 2, 5
MR HS MUNSHAW for Respondent No. 4

CORAM : MR.JUSTICE J.M.PANCHAL
and

MR.JUSTICE H.H.MEHTA

Date of decision: 12/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. By filing this application under the provisions of the Contempt of Courts Act, 1971, the applicant has prayed to initiate appropriate proceedings against the opponents for contempt of Court and direct them to make necessary payment to the applicant in pursuance of the directions given by the High Court vide judgment dated April 27, 2000 rendered in Special Civil Application No.288 of 2000.

2. The applicant was employed as Field Supervisor in the Agricultural Department of the State of Gujarat. He retired from service on May 31, 1990, but was not paid terminal benefits. Therefore, he had instituted Special Civil Application No.288 of 2000 for a direction to the respondents to pay retiral benefits to him with 18% interest thereon and costs. The petition was heard by the learned Single Judge, who allowed the same by judgment dated April 27, 2000. In the operative part of the judgment following directions were given to the respondents ;

" In the facts and circumstances, it is deemed fit that this petition be allowed; not only that it should be allowed with costs. The respondents shall be directed not only to make the payment of the amount which is withheld but the same shall be paid with interest. Mr.Upadhyay, learned counsel for the petitioners submitted that the Courts have entertained the requests of the petitioners for the interest at the rate of 18% and therefore, in this case also interest at the rate of 18% be awarded. The request of Mr.Upadhyay for interest @ 18% is not accepted. The respondents are directed to pay the amount withheld, with interest at the rate of 12% per annum from the date on which it ought to have been paid by the department, till the date the amount is actually paid to the petitioner. Rule is made absolute with cost of Rs.2,500/- Thousand Five Hundred Only). This amount shall paid as early as possible, but not later than eight weeks from the date of receipt of the order."

3. A bare reading of the above referred to directions make it manifest that the respondents were directed to make payment of retiral benefits to the applicant with interest at the rate of 12% per annum and Rs.2,500/- (Rs.Two Thousand Five Hundred Only), by way of costs within 8 weeks from the date of the receipt of the order. The respondents did not make payment of retiral benefits to the applicant within 8 weeks from the date of the receipt of the order. Therefore, the applicant had served the notice dated August 14, 2000 calling upon the respondents to make payment of retiral benefits as directed by the High Court or to face contempt proceedings. The case of the applicant is that inspite of receipt of notice the respondents did not comply the directions given by the High Court in Special Civil Application No.288 of 2000. What is claimed in the application is that the respondents have wilfully disobeyed the directions issued by the High Court and have committed contempt of Court. Under the circumstances the applicant has filed present application and claimed reliefs to which reference is made earlier.

4. On service of notice an affidavit-in-reply on behalf of the respondents was filed by Shri C.N. Soria, Joint Director of Agriculture (S.C.), Rajkot. Though Shri Soriya tendered unconditional apology in paragraph 4 of his reply affidavit, he stated that unless and until the amount due from the applicant to the State Government was paid by the applicant, the Treasury Office, Ahmedabad, shall not make the payment except that of provisional pension. According to Shri Soria, applicant was liable to pay a sum of Rs.86,000/- (Rs.Eighty Six Thousand Only) and as the said sum was not paid by the applicant, the contempt application was liable to be rejected. Dr.G.M. Vala, Joint Director of Agriculture, Gandhinagar, has filed further affidavit-in-reply on behalf of the respondents pointing out that pursuant to the direction of the High Court dated October 18, 2000, respondents have deposited an amount of Rs.86,000/- as well as a sum of Rs.2,500/awarded as costs with 12% interest on Rs.86,000/- from June 1, 1990 to October 20, 2000. Further it is mentioned in the reply that the respondents have filed Letters Patent Appeal Stamp No.118 of 2000 against the judgment rendered by the learned Single Judge in Special Civil Application No.288 of 2000 and therefore, the contempt petition should be dismissed. Dr.Vala has also tried to justify the noncompliance of the directions of the High Court by stating that the applicant had failed to make the payment of amount due from him to the State Government.

5. We have heard the learned counsel for the parties. It is relevant to notice that at the hearing of Special Civil Application No.288 of 2000, it was never pointed out by the respondents to the Court that the applicant was liable to pay an amount of Rs.86,000/- to the State Government. In our view, the respondents were not justified at all in not complying with the directions issued by the High Court on spacious plea that the applicant had failed to make the payment of amount due to him to the State Government. We also notice that though Shri Soria has tendered unconditional apology in the affidavit-in-reply filed on behalf of the respondents, his stand that the Treasury Office, Ahmedabad, shall not make the payment to the applicant inspite of directions issued by the High Court, unless and until payment of amount due from the applicant to the State Government is made, is not in good test. From the affidavit-in-reply sworn by Shri Soria, it is evident that it was drafted by one of the learned Assistant Government Pleaders and therefore, we do not want to take serious view of the language used in the affidavit-in-reply, because a reasonable doubt arises as to whether, in fact, this is so stated by Shri Soria or stated so by the learned Assistant Government Pleader while drafting affidavit-in-reply. The fact that pursuant to the direction given by this court on October 20, 2000 in the present application, respondents have deposited the sum due to the applicant and the applicant has withdrawn the same is not in dispute. From the contents of two affidavits-in-reply filed on behalf of the respondents, it becomes evident that because of misapprehension on the part of the respondents to the effect that unless and until payment of amount due was made by the applicant to the State Government, he was not entitled to the benefit of directions of the High Court, the directions issued by High Court were not complied with.

6. On overall view of the matter we are satisfied that there is not wilful disobedience of the directions issued by the Court in Special Civil Application No.288 of 2000. Under the circumstances, it is not necessary to initiate any proceedings against the respondents for Contempt of court.

For the foregoing reasons, the application fails. Rule is discharged with no order as to costs.

(J.M. Panchal, J.)

(H.H. Mehta, J.)

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